

496-124A
PTE:vlr:4

120

12-31-91

#6
12/31/91

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re Application of

ROBERT J. KYLE

Serial No. 07/645,457

Filed: January 24, 1991

For: MICROBIAL OIL MIXTURES
AND USES THEREOF

Examiner: K. Jordan

Group Art Unit: 125



REQUEST FOR RECONSIDERATION

Commissioner of Patents
and Trademarks
Washington, D.C. 20231

Dear Sir:

In an Office Action dated October 29, 1991, claims 1-66 were rejected. Applicant respectfully traverses that rejection and requests reconsideration of the application in view of the following remarks.

Applicant thanks the Examiner for withdrawing the earlier issued restriction requirement and rejections. Claims 1-66 presently are pending and stand rejected under 35 U.S.C. § 103 as being unpatentable over Clandinin et al. in view of Traitler et al.

To again summarize the present invention, Applicant has discovered that oil-producing microbes can be induced to produce desirable oils containing long chain polyunsaturated fatty acids (PUFAs). Such oils are useful for various purposes. Oils from various microbes can be blended with each other, or with other PUFA containing oils to provide useful compositions. The utility of these compositions is not predicated upon various ratios of the oils to each other. It is predicated upon the fact that microbial oils containing long-chain PUFAs are used in the composition. One such composition is a diet supplement.

For example, independent process claims 1, 3 and 21 of the present application each require, as a positive step, obtaining microbial oils. Similarly, the independent product claims, claims 29, 36 and 43-45, all positively require that the

composition contain microbial oil. Of course, all claims dependent from these claims also require, as a positive limitation, microbial oils.

The Office Action contains a statement that the "claims appear to be drawn to processes and compositions for diet supplements containing long chain polyunsaturated fatty acids." It is respectfully submitted that this interpretation of the invention is incorrect. The claims are drawn to processes and compositions for diet supplements containing microbial oils which, in turn, contain PUFAs. Indeed, all of the composition claims require the presence of microbial oils. Similarly, each process claim requires the obtention and use of microbial oils. Thus, the claims are not simply drawn to processes and compositions for diet supplements containing long chain polyunsaturated fatty acids. Perhaps this misunderstanding of the invention serves as the basis for the rejection.

Clandinin et al. teaches the use of egg yolk lipid and fish oil to provide an edible fat product for incorporation in an infant formula. Nowhere do Clandinin et al. recognize, teach or suggest that microbial oils are useful as dietary supplements. Nowhere do Clandinin et al. teach or suggest the use of microbial oils in preparing infant formulas or other dietary supplements. Nowhere do Clandinin et al. even recognize that microbial oils contain PUFAs. The claimed subject matter pertains to compositions containing and processes using microbial oils.

The secondary reference, Traitler et al., does not cure the above-described deficiencies of Clandinin et al. As recognized in the Office Action, Traitler et al. discloses only the obtention of an oil from a fruit where the oil contains gamma linolenic acid. Again, there is no teaching or suggestion whatsoever regarding microbial oils.

The Office Action contains a statement that the choice of specific oils is "deemed" to be obvious. There is no evidence of record supporting this contention. The fact that the microbial oils contain PUFAs, as do fish oils, is not evidence of

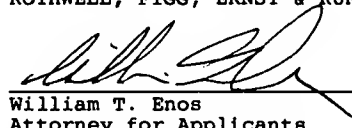
obviousness. Neither reference, whether taken singly or in combination with the other, recognizes that microbial oils contain PUFAs useful in dietary supplements. That is Applicant's invention. Absent the teaching of the present specification, there is no evidence of record even supporting the statement that the fatty acids are chemically the same. In this respect the present rejection is similar to the earlier 103 rejections which were withdrawn. Once again, Applicant requests that if the rejection is based upon personal knowledge possessed by the Examiner, the basis for the rejection be set forth in an affidavit, in accordance with 37 CFR § 1.107.

For all of the foregoing reasons, Applicant submits that the present application now is in condition for allowance. Accordingly, withdrawal of the rejection is solicited and prompt passage of the application to issue is requested.

Respectfully submitted,

ROTHWELL, FIGG, ERNST & KURZ, p.c.

By


William T. Enos
Attorney for Applicants
Registration No. 33,128

1700 K St., N.W.
Washington, D.C. 20006
Telephone: (202) 833 5740